

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant Michael G. Nance suffered accidental injury arising out of and in the course of his employment on April 20, 1990. The Award, dated July 28, 1994, was appealed to the Workers Compensation Appeals Board which decision was then appealed to the Kansas Court of Appeals. On December 28, 1994, claimant's Motion for Review and Modification was filed with the Director of Workers Compensation. The Special Administrative Law Judge in the Award of July 19, 1995 granted claimant a fifty percent (50%) permanent partial general body work disability resulting from the increase in claimant's symptomatology.

Respondent contends claimant has failed to prove that his ongoing symptomatology is related to the injury suffered in 1990. Respondent argues that claimant's condition worsened as a result of the natural aging process or as a result of an intervening injury. Claimant last worked for respondent in 1991.

The only medical evidence dealing with claimant's increased symptomatology comes from Dr. Anthony Pollock. Dr. Pollock, a board-certified orthopedic surgeon, had the opportunity to examine and treat claimant both for the 1990 injury and for the 1994 condition. While he noted the MRIs performed on claimant in October, 1994 showed a definite increase in the disc herniation at L5-S1, Dr. Pollock had significant difficulty attributing this progressive condition to claimant's 1990 injury. He was asked specifically the cause of this increased condition and testified at various places in the transcript that the condition was caused by progressive degenerative disc disease, or possibly from the natural aging process; in another place he testified that he did not know what the cause was but he felt it may be the natural aging process; and finally he testified that he was not sure if it was caused by the injury or the natural aging process. The Appeals Board finds Dr. Pollock cannot relate claimant's worsened condition to the 1990 work-related injury.

In proceedings under the Kansas Workers Compensation Act, the burden of proof is on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 508(g); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Review and modification when claimed under K.S.A. 44-528 is intended to determine if the claimant's disability has changed. This determination cannot be made without comparing claimant's condition at the time of the award with his condition at the time the modification is sought. Gile v. Associated Co., 223 Kan. 739, 576 P.2d 663 (1978). In order to prove his entitlement to additional compensation, claimant must also necessarily prove that the worsened condition is in some way medically related to his original injury. In this instance the claimant has failed to prove by preponderance of the credible evidence that his worsened condition is related to the injury suffered on April 20, 1990 and, as such, his request for review and modification must be denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated July 19, 1995, should be, and is hereby, reversed and claimant's Motion for Review and Modification from the original Award of February 14, 1994, is denied. Claimant retains entitlement to the Award by the Kansas Workers Compensation Appeals Board on July 28, 1994.

The fees necessary to defray the expense of the administration of Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

William F. Morrissey

Special Administrative Law Judge	\$150.00
Barber & Associates	
Transcript of Preliminary Hearing (3-31-94)	\$ 90.70
Transcript of Preliminary Hearing (9-6-94)	\$ 68.90
Transcript of Preliminary Hearing (2-28-95)	\$ 52.70
Deposition Services	
Deposition of Anthony G. A. Pollock, M.D.	\$197.00
Deposition of Jerry Hardin	\$170.00
Deposition of Michael G. Nance	\$244.00

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven L. Foulston, Wichita, KS
James A. Cline, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director